

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3448

IN THE MATTER OF:

Served January 4, 1990

Application ICRA TRANSPORTATION)
SERVICES, INC., for a Certificate)
Authorizing Charter and Special)
Operations Restricted to Westfields)
International Conference Center)

Case No. AP-89-39

Application of WESTSCOT LIMITED)
PARTNERSHIP for a Certificate)
Authorizing Charter and Special)
Operations Restricted to Westfields)
International Conference Center)

Case No. AP-89-40

By application filed August 1, 1989, and supplemented August 24, 1989, ICRA Transportation Services, Inc. (ICRA Transportation), a Virginia corporation, seeks a certificate of public convenience and necessity to transport passengers in charter and special operations between the Westfields International Conference Center, 14750 Conference Center Drive, Chantilly, VA, on the one hand, and, on the other, points in the Metropolitan District. 1/

By application filed August 1, 1989, and supplemented August 24, 1989, Westscot Limited Partnership (Westscot) seeks a certificate of public convenience and necessity to transport passengers in charter and special operations between the Westfields International Conference Center, 14750 Conference Center Drive, Chantilly, VA, on the one hand, and, on the other, points in the Metropolitan District. 2/

A public hearing was held on October 12, 1989, pursuant to Order Nos. 3396 and 3397, served August 25, 1989. The attorney for ICRA Transportation and Westscot filed a joint motion requesting that the cases be consolidated for hearing on the same record. The motion was granted at hearing. Two witnesses appeared at hearing. No protests were filed.

1/ To the extent that this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b), by Order No. 3396.

2/ To the extent that this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b), by Order No. 3397.

SUMMARY OF EVIDENCE

Mr. Leonard D. Rochette is assistant general manager for International Conference Resorts of America (ICRA). ICRA is part owner ^{3/} of Westfields International Conference Center (Conference Center) and manages the facility pursuant to contract with Westscot. The Conference Center is a hotel/meeting complex located in Chantilly, VA. It has 340 rooms for guests in addition to numerous meeting rooms. The facility opened May 15, 1989. ICRA Travel Services, Inc. (ICRA Travel), is an affiliate of ICRA. It is an Arizona corporation that operates travel services in conjunction with ICRA. ICRA Transportation is a wholly-owned subsidiary of ICRA Travel and was formed specifically to provide transportation for the Conference Center. Westscot is also part owner of the Conference Center. Mr. Rochette was authorized to speak on behalf of both ICRA Transportation and Westscot.

Mr. Rochette holds a degree in hotel management and has over 15 years experience in hotel/conference center management. His duties include overseeing the food and beverage, housekeeping, and transportation departments for the Conference Center.

ICRA Transportation plans to perform the proposed operations using one 6-passenger "stretch" limousine and one 1989 29-passenger minibus. ICRA Transportation proposes the following rates:

<u>Destination</u>	<u>Limousine</u>	<u>Minibus</u>
Kennedy Center	150.00/ --	200.00/10.00
Smithsonian	150.00/ --	200.00/10.00
Capital Centre	150.00/ --	200.00/10.00
All other locations		
hourly rate	65.00/ --	--/10.00*

* Flat Rate

The \$10 rate is a per-capita rate. All other rates pertain to charter operations. ICRA Transportation submitted a tariff that included rates for destinations outside of the Commission's jurisdiction. It was directed to submit a revised tariff deleting rates for operations outside the Metropolitan District.

^{3/} ICRA is a limited partner with Westscot Limited Partnership, Perpetual Bank, Henry A. Long Company, and M. J. Properties.

ICRA Transportation has neither assets nor liabilities. With its application ICRA Transportation filed statements representing ICRA Travel's financial condition. Mr. Rochette testified that the documents were submitted to provide evidence of possible financial backing for ICRA Transportation from ICRA Travel. The balance sheet dated April 30, 1989, shows current assets of \$167,248.72 which includes \$161,899.53 cash, and \$27,122.16 in fixed and other assets. Listed are current liabilities at \$182,557.45, no long-term liabilities, and \$11,813.43 in equity. ICRA Travel's operating statement for the four months ended April 30, 1989, lists operating income of \$48,524.27, and \$68,658.02 in operating expenses resulting in a net loss of \$20,133.75. ICRA Transportation expects to generate \$1,250 in WMATC income during its first year of operations, with \$1,970 in expenses, resulting in a projected loss of \$720.

ICRA Transportation possesses no vehicles. When questioned regarding acquisition of vehicles, Mr. Rochette responded "I don't have a date when vehicles would be purchased" and operated by ICRA Transportation. ^{4/} No employees are currently on staff to provide the proposed transportation. Once authority is acquired, the same individuals responsible for driving Westscot's vehicles would also be required to drive ICRA Transportation's vehicles.

Westscot plans to provide the proposed transportation using four 1989 ten-passenger vans; one 1989 six-passenger "stretch" limousine; and two 1989 three-passenger limousines. Leased vehicles would be used for the account of the Conference Center only. The vehicles would be parked in front of the facility for ready access. Westscot is in possession of its vehicles and currently provides intra-Virginia transportation for the Conference Center pursuant to a grant of temporary authority issued by Virginia's State Corporation Commission.

Westscot proposes the following rates:

<u>Destination</u>	<u>Limovan</u>	<u>Towncar</u>	<u>Limousine</u>
Kennedy Center	100.00/10.00	100.00/ --	150.00/ --
Smithsonian	100.00/10.00	100.00/ --	150.00/ --
Capital Centre	200.00/15.00	125.00/ --	150.00/ --
All other locations			
hourly rate	75.00/ --	45.00/ --	65.00/ --

The \$10 and \$15 rates are per-capita rates for special operations. All other rates pertain to exclusive use charter operations. Westscot submitted a tariff that included rates for destinations outside of WMATC jurisdiction and was directed to submit a revised tariff deleting rates for operations beyond the Metropolitan District.

^{4/} The record indicates that should vehicles be acquired they will be leased.

Westscot's balance sheet dated September 30, 1989, lists current assets of \$3,055,177, including \$392,418 cash, fixed assets after allowance for depreciation of \$56,989,090, and other assets (operating equipment and deferred costs) of \$5,737,689. Current liabilities are listed at \$2,586,942 with \$43,978,467 in long-term liabilities. Equity of \$19,216,547 is also listed. Westscot's income statement for the period May 15, 1989, through September 30, 1989, shows operating income of \$2,980,402 and \$9,152,013 in operating expenses, resulting in a net loss of \$6,171,611. Westscot projects revenue of \$8,730 from its first year of WMATC operations with \$7,528 in operating expenses.

Mr. Michael D. Johnson testified regarding vehicle maintenance, driver employment, and driver training. Mr. Johnson is the bell captain at the Conference Center. He is responsible for overseeing transportation and vehicle maintenance and the hiring and firing of bellmen. In addition to other duties, bellmen would be part-time drivers for ICRA Transportation and Westscot. They must have a clean driving record and a valid chauffeur's license. The drivers would participate in a safe-driving course and undergo supervised training. Westscot's vehicles are new and receive a daily maintenance check. Westscot, through Mr. Johnson, is familiar and willing to comply with the United States Department of Transportation safety regulations, the Compact, and the Commission's rules and regulations. Mr. Johnson testified that the Conference Center requires transportation between the Conference Center, on the one hand, and, on the other, points throughout the Metropolitan District. Approximately 100 to 250 people a month would require transportation.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission looks to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact which provides:

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity (Emphasis supplied.)

Based on review of the record in Case No. AP-89-39, the Commission finds that ICRA Transportation has failed to sustain the burden of proof imposed by the Compact. In Case No. AP-89-40, the Commission finds that Westscot has met its burden.

ICRA Transportation has no assets, and the record fails to show definite future funding from other sources. ICRA Transportation's own witness admitted that he had no authority to represent the principals of ICRA Travel as financial backers of ICRA Transportation. Even if there were concrete evidence in the record to support a claim that ICRA Travel would be ICRA Transportation's source of funding, the parent's finances indicate little ability to aid additional endeavors. ICRA Travel's most recent income statement shows an operating loss of \$20,133.75. Moreover, ICRA Transportation has no vehicles and no ready capital to purchase or lease vehicles. It has no employees and no immediate plans to commence operations. ICRA Transportation can only be viewed as a "shell" corporation which has not presented itself as a serious applicant in these proceedings. Due to ICRA Transportation's failure to prove its fitness, we need not reach the issue of public convenience and necessity.

Westscot currently holds temporary authority to perform intra-Virginia transportation for the account of the Conference Center. It is in possession of the vehicles that would be used in the operations here proposed. Westscot is comprised of investors who have just opened a multi-million dollar hotel/conference center. As a result of this undertaking, Westscot has incurred significant debt and is currently operating at a loss. However, once the hotel begins to operate at capacity, it is expected to generate sufficient revenue to offset losses. Ongoing operations in combination with Westscot's other assets should help to improve Westscot's financial position. Westscot is familiar with the Compact and the Commission's rules and regulations, including those relating to safety, and will comply with them.

We turn now to the matter of whether Westscot has satisfied its burden of proving that the public convenience and necessity require the proposed service. In determining whether an applicant has met its burden of proof, the Commission relies on the test enunciated in Pan-American Bus Lines Operation (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

In addition to offering meeting facilities, the Conference Center seeks to provide all the services that guests would require. It, therefore, wants to make transportation available to its patrons. Since the authority sought in Case No. AP-89-40 is limited to service for a single account, just one public witness, Mr. Johnson, the bell captain of the Conference Center and an employee of ICRA,

represented the Conference Center. ICRA is under contract with Westscot to manage the Conference Center. This contractual relationship has the effect of making Mr. Johnson an employee of Westscot as well as a public witness. Hence, Westscot's influence over Mr. Johnson's testimony must be examined. Mr. Johnson's testimony that approximately 100 to 250 people a month would require transportation on a monthly basis was the sole basis of support for the volume and frequency of transportation to be required. Given the nature of the authority requested, it appears that Mr. Johnson is the proper witness to testify to the transportation requirements of the Conference Center. The Commission is also aware that a facility of this type will generate transportation needs. Whether the witness was subject to any undue influence from the employer/applicant, therefore, becomes a judgement call. The witness directly oversees day-to-day transportation needs of the Conference Center and was sworn to provide testimony that was accurate to the best of his knowledge and belief. We find the content of his testimony credible. The Commission therefore finds that Mr. Johnson's testimony was delivered without undue influence by Westscot and concludes that the testimony of record supports Westscot's position that the proposed service is responsive to a public need.

THEREFORE, IT IS ORDERED:

1. That the application of ICRA Transportation Services, Inc., for a certificate authorizing charter and special operations in Case No. AP-89-39 is hereby denied in its entirety.

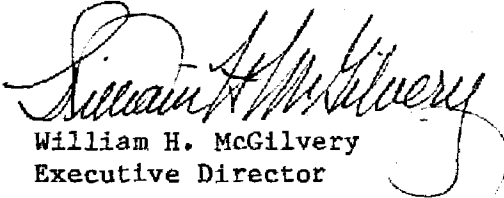
2. That in Case No. AP-89-40, Westscot Limited Partnership is hereby conditionally granted authority, contingent upon timely compliance with the terms of this order, to transport passengers in charter and special operations between the Westfields International Conference Center, on the one hand, and, on the other, points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia.

3. That Westscot Limited Partnership is hereby directed to file with the Commission within 30 days of the service date of this order: (a) an affidavit of identification of vehicles in accordance with Commission Regulation No. 67 for which purpose WMATC No. 163 is hereby assigned; (b) an equipment list indicating make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle to be used in revenue operations; (c) three copies of its WMATC Tariff No. 1 as amended to delete rates for all non-WMATC operations; (d) a certificate of insurance in accordance with Commission Regulation No. 62; and (e) evidence of ownership or a lease in accordance with Commission Regulation No. 69 for each vehicle to be used in revenue service.

4. That unless Westscot Limited Partnership complies with the requirements of the preceding paragraph within 30 days of the service date of this order or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Westscot Limited Partnership, in the form and as worded in the Appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

NO. 163

WESTSCOT LIMITED PARTNERSHIP

By Order No. 3448 of the Washington Metropolitan Area Transit Commission issued January 3, 1990;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3448;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS, transporting passengers between the Westfields International Conference Center, 14750 Conference Center Drive, Chantilly, VA, on the one hand, and, on the other, points in the Metropolitan District.

SPECIAL OPERATIONS, transporting passengers between the Westfields International Conference Center, 14750 Conference Center Drive, Chantilly, VA, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTED in both charter and special operations against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.